

2010 WL 11184807 (Mass.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of Massachusetts.
Norfolk County

TOWN OF WELLESLEY, acting by and through its Board of Health, Plaintiff,
v.
Catherine BARBER, Defendant.

No. NOCV200801541.
April 29, 2010.

Plaintiff Town of Wellesley's Motion for an Order Dismissing the Complaint (M.R.C.P. 41 (a) (2))

[Albert S. Robinson](#), Esq. (BBO#422820), Wellesley Town Counsel, Grindle, Robinson, Goodhue & Frolin, 40 Grove Street, Suite 190, Wellesley, MA 02482, (781) 235-3300.

Plaintiff, Town of Wellesley, moves pursuant to [M.R.C.P. 41 \(a\) \(2\)](#) for an Order dismissing the Complaint, citing as grounds that the Defendant has declined to sign a Stipulation of Dismissal, saying she has “counterclaims”

A Memorandum in Support of this Motion, including a statement of reasons, is attached.

Date: April 14, 2010

Plaintiff Town of Wellesley, by its Board of Health, by its attorney,

<<signature>>

Albert S. Robinson, Esq. (BBO#422820)

Wellesley Town Counsel

GRINDLE, ROBINSON, GOODHUE & FROLIN

40 Grove Street, Suite 190

Wellesley, MA 02482

(781) 235-3300

TOWN OF WELLESLEY'S MEMORANDUM IN SUPPORT OF ITS [M.R.C.P. 41\(a\)\(2\)](#) MOTION FOR AN ORDER DISMISSING THE COMPLAINT

PARTIES

1. Plaintiff is the Town of Wellesley, acting by and through its Board of Health (Health Department).

2. Defendant is Catherine Barber (Ms. Barber), who is the owner of the single family dwelling at 3 Solon Street, Wellesley (the premises).

BACKGROUND

1. The premises have been is serious neglect since at least as early as 2002, endangering Ms. Barber's health and safety in the opinion of the Health Department.

2. In August 2005, pursuant to an administrative inspection warrant issued by the District Court, the Health Department inspected the interior of the premises and on August 3, 2005 issued an Emergency Condemnation and Order to Vacate.

3. Believing Ms. Barber's health and safety continued to be endangered, on August 15, 2008 the Health Department filed its Complaint, seeking the appointment of a receiver with authority to bring the premises into compliance with the State Sanitary Code.

4. On September 11, 2008, after hearing, this Court (Sanders, J.) declined to appoint a receiver, but did instruct Ms. Barber to work with the Health Department in bringing the premises into compliance with the Code's standards for habitability.

5. Thereafter Ms. Barber and the Health Department were in almost daily communication, and by agreement some strides were made in the condition of the premises.

6. Meanwhile Ms. Barber, having had the foresight at some earlier time to obtain long term care insurance, was successful in obtaining coverage for living arrangements at Avery Crossings, a long term care facility in Needham.

7. Since at least September, 2008 Ms. Barber has been living at Avery Crossings.

8. Ms. Barber has advised that as she will not be returning to the premises to sleep, subject only to the insurance continuing and she foresaw no reason why the insurance will not continue.

9. Regardless, in fact, since Ms. Barber is not living at the premises, there is no violation of the State Sanitary Code.

10. The Health Department, has, at Ms. Barber's request, resumed a protocol which permits Ms. Barber access to the premises during the day to retrieve, organize and distribute her possessions.

11. The premises remain condemned, but Ms. Barber is no longer in violation of the State Sanitary Code because she is not living in the premises.

12. The Health Department, by the undersigned, has asked Ms. Barber to agree to the Town dismissing the Complaint, to which she has responded that she would not agree because she has "counterclaims".

13. The only documents to which Ms. Barber could be referring is the document dated September 9, 2008, which is entitled "Corrections and Amendments to Answer", and in which the following several lines of text, is a further title and text which reads in full as follows:

"COUNTERCLAIMS: Before the Town's papers were filed, Ms. Barber had filed 5 applications for criminal complaint in the Dedham District Court, and a Civil Complaint in the Dedham Superior Court, and submits them as counterclaims. Briefly, they are Constitutional, Civil, Human Rights (State and Federal), invasion of privacy, defamation, **Elder abuse** etc. etc.

Ms. Barber would appreciate having everything taken from her home returned to her."

14. The five “applications for criminal complaint” have been denied by the District Court Clerk/Magistrate, and Ms. Barber's effort to appeal that Clerk's decision has been rejected by the Appeals Court. A copy of the decision of the Appeals Court dated October 21, 2009, in the matter styled Catherine Barber v. James A. Goodhue & others, is attached as Exhibit A.

15. The “Civil Complaint in Dedham Superior Court” to which Ms. Barber refers is styled Catherine Barber v. Town of Wellesley Health Department et als, Superior Court Department No. CV08-01449. The Complaint has been dismissed by that Court, to which Ms. Barber has filed an appeal in the Appeals Court where that matter now stands. Copies of her Superior Court Complaint, the Court's Judgment of Dismissal and Memorandum of Decision are attached collectively as Exhibit B.

16. On April 2, 2010, Ms. Barber notified the Town of still another application for a criminal complaint, naming the Town's Executive Director, which the District Court declined to issue and which is now the subject of a Notice of Appeal. Copies of those documents sent to the Town on April 2, 2010 are attached collectively as Exhibit C.

STATEMENT OF REASONS WHY THE TOWN'S MOTION SHOULD BE ALLOWED

1. The Health Department wishes to dismiss its Complaint because Ms. Barber no longer lives at the premises so habitability of the premises is no longer an issue.

2. The Court should order Dismissal because Ms. Barber's objection, that she “has counterclaims”, is not supported by the pleadings. No counterclaims have been pleaded, but if the document dated September 9, 2008 is construed by this Court to constitute counterclaims under the Rules, they at best incorporate pleadings in other matters, which have already been ruled on by the Appeals Court or are pending there.

CONCLUSION

For the foregoing reasons, the Town's Motion to Dismiss the Complaint in this action should be allowed. If this Court finds that “counterclaims” have been pleaded, “the counterclaims” should be dismissed as well, with prejudice.

Date: 4/14/10

Plaintiff Town of Wellesley, by its Board of Health, by its attorney,

<<signature>>

Albert S. Robinson, Esq. (BBO#422820)

Wellesley Town Counsel

GRINDLE, ROBINSON, GOODHUE & FROLIN

40 Grove Street, Suite 190

Wellesley, MA 02482

(781) 235-3300

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.